

# **EXHIBIT A**

Page 1/14/05

Silverpop Dynamic Messaging - Hosted Service  
Standard Order Form

Effective Date: 1/5/2005

Initial Term: 6 months

## Customer Information:

Company: Leading Market Technologies Inc.

Address: One Kendall Square, Building 100

C/SIZ: Cambridge, MA 02139

## Customer Technical Contact:

Name: Tom Kahana

Phone: 617) 494-4747 x2259

Fax:

E-mail: tkahana@lmtech.com

## Customer Billing Contact:

Name:

Phone:

Fax:

E-mail:

Customer hereby orders from Silverpop Systems Inc. ("Silverpop") the Silverpop Product and Silverpop Services described in this Order Form. This Order Form, which is issued pursuant and subject to the attached Silverpop Product License & Service Agreement, shall become valid when executed by Customer and accepted by an authorized representative of Silverpop. This Order Form, any other Silverpop Order Forms, and the Product License & Service Agreement, executed by the parties, shall collectively constitute the "Agreement" between the parties. This Agreement is effective as of the last date of signature set forth on this Order Form, unless otherwise agreed to by the parties and set forth in the "Effective Date" box of this Order Form (the "Effective Date").

CUSTOMER AND SILVERPOP AGREE THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT SUPERSEDE ANY PROVISIONS OF ANY CUSTOMER DRAFTED PURCHASE ORDER AND SUPERSEDE ALL PROPOSALS, WRITTEN OR ORAL, AS WELL AS OTHER COMMUNICATIONS BETWEEN CUSTOMER AND SILVERPOP RELATING TO THIS AGREEMENT. IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN A TERM OR CONDITION OF THIS ORDER FORM AND THE PRODUCT LICENSE AND SERVICE AGREEMENT, THE APPLICABLE TERM OR CONDITION OF THIS ORDER FORM SHALL PREVAIL FOR PURPOSES OF THIS ORDER FORM ONLY.

## ACCEPTED BY CUSTOMER:

Signature

Name

Title

Date

## ACCEPTED BY SILVERPOP:

Signature

Name

Title

Date

**Silverpop Dynamic Messaging - Hosted Service  
Standard Order Form**

Product	Quantity	Billing Period	Unit Price	Extended Price		
				One Time	Annual	Monthly
<b>Silverpop Dynamic Messaging - Annual</b>		Annual	\$ 32,400	\$ -	\$ 32,400	\$ -
Annual hosted license fee - includes:						
License for user accounts -	1					
New version upgrades						
Messages -	9,000,000					
<b>Annual Support Contract:</b>		Annual				
<b>Training - per user:</b>		One Time	\$ -	\$ -		
<b>Professional Services:</b>		One Time		\$ -		
<b>Supplemental Charges:</b>						
Additional user accounts	-	-		\$ -	\$ -	\$ -
Messages over monthly license limit		Per msg	\$ 0.0036			
Rich media messages (*)		Per msg	\$ 0.0300			
Video greater than 30 seconds	Each 30 sec	Per msg	\$ 0.0100			
<b>Other Charges:</b>						
	-	-	-	\$ -	\$ -	\$ -
	-	-	-	\$ -	\$ -	\$ -
	-	-	-	\$ -	\$ -	\$ -
<b>Total Extended Price</b>				\$ -	\$ 32,400	\$ -
					\$ -	
<b>Total Amounts Due</b>				\$ -	\$ 32,400	\$ -
<b>Total Contract Value:</b>	Year 1		\$ 32,400			
	Total		\$ 32,400			

Fees for licenses and other recurring charges will be billed one time, annually, or monthly as indicated at the beginning of the period. Fees charged on a per message basis and for services will be billed in arrears for the month in which messages are sent or services are rendered.

Customer agrees to pay all sales, use, personal property or other taxes associated with this Order Form, except taxes on Silverpop's net income.

## PRODUCT LICENSE & SERVICE AGREEMENT

This Product License & Service Agreement (together with attendant Schedules and Order Form(s), collectively, the "Agreement") is by and between Silverpop Systems Inc., a Delaware corporation ("Silverpop"), located at 200 Galleria Parkway Suite 750, Atlanta, GA 30339 and Leading Market Technologies Inc. a MASSACHUSETTS corporation ("Customer"), located at One Kendall Square, Building 100 Cambridge, MA 02139.

**Effective Date as of January 5, 2005**

### 1. LICENSE.

- 1.1. Silverpop hereby grants Customer and its End Users a non-exclusive, non-transferable right and license to access and use the Silverpop Product hosted on Silverpop's servers via the Internet solely for Customer's own internal business use, subject to the terms and conditions of this Agreement.

### 2. SILVERPOP PRODUCT AND SILVERPOP SERVICES.

- 2.1. **Order Form.** Silverpop Product and Silverpop Services to be provided under this Agreement are identified in the Order Form(s) submitted by Customer and accepted by Silverpop. In the event of a conflict or inconsistency between a term or condition of an Order Form and this Agreement, the applicable term or condition of the Order Form shall prevail for purposes of such Order Form only.

### 3. FEES AND PAYMENT TERMS.

- 3.1. **Payments.** Customer will pay to Silverpop all fees due Silverpop under this Agreement, including, without limitation, all fees for license of the Silverpop Product and otherwise for provision of Silverpop Services as set forth on one or more Order Forms ("Fees"). Unless otherwise set forth in this Agreement, all Fees will be due within thirty (30) days after the date of an invoice for same.
- 3.2. **Overdue Accounts.** A late fee may be charged by Silverpop on Fees and Expenses not paid to Silverpop by Customer as set forth in the Order Form or within thirty (30) days after the date of the invoice for same at the lesser of (a) the maximum amount chargeable by law or (b) one and one-half percent (1½%) per month commencing with the date payment was due. Failure to pay invoices within the established terms may also result in an interruption of service until all amounts due are paid.

### 4. NONDISCLOSURE AND CONFIDENTIALITY.

- 4.1. Each party hereunder may disclose to the other party certain Proprietary Information of such party or of such party's associated companies, suppliers, or customers. Recipient agrees to hold the Proprietary Information disclosed by Owner in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party, or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by this Agreement. The obligations in this Section 4 will continue for the Term of this Agreement and for a period of five (5) years thereafter.

### 5. TERM AND TERMINATION.

- 5.1. **Generally.** This Agreement shall commence as of the Effective Date when signed by both parties and thereafter will remain in effect for six (6) months ("Initial Term") or until terminated as provided herein.
- 5.2. **Default.** In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement and does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement.
- 5.3. **Effect of Termination.** Within thirty (30) days after the termination of this Agreement for any reason, (i) Customer will pay Silverpop for all Services performed by Silverpop up to the effective date of such termination and, in the case where Silverpop terminates this Agreement in accordance with Section 5.2 also pay all sums remaining unpaid for products and services ordered under this Agreement, and (ii) Customer will destroy all Silverpop documents, materials, and all copies, in whole or in part, all documentation related thereto, and any Proprietary Information of Silverpop or its suppliers or licensors within its possession, or upon request by Silverpop, Customer will return to Silverpop all such property, including, but not limited to, the Proprietary Information of Silverpop. Upon termination of this Agreement for any reason, all rights and licenses granted by Silverpop hereunder to Customer will immediately cease. Termination of this Agreement will also terminate all rights granted or services provided to any End User.
- 5.4. **Survival.** Termination of this Agreement by either party pursuant to the provisions of this Section will terminate each party's obligations under this Agreement except for Sections 4, 6, 7, 8 and 9, all of which will survive termination of this Agreement.
6. **SILVERPOP INDEMNIFICATION.** Silverpop shall indemnify and hold Customer harmless against any and all damages, costs and expenses arising out of any suit, claim, or proceeding alleging that the Silverpop Product or associated material infringes a third party's intellectual property rights. Silverpop shall pay any and all awards, judgments, settlements, fees and costs, including, without limitation, attorneys' fees, incurred by or on behalf of Customer in the defense, satisfaction and/or settlement of any and all such claims, lawsuits and causes of action. Silverpop's obligations under this Section 6 are expressly conditioned on (a) Customer giving Silverpop prompt written notice of any claims, demand, or suit threatened or instituted against it for any losses, damages, costs, expenses, liabilities, obligations and claims of any kind that Customer may at any time suffer or incur resulting directly and solely from an event for which Silverpop is required to indemnify Customer; (b) Customer providing Silverpop (at Silverpop's expense) with all information and assistance necessary to defend or settle such liability or claim; and (c) Silverpop having control of the defense and all related settlement negotiations, with Customer's approval, such approval not to be unreasonably withheld.
7. **CUSTOMER INDEMNIFICATION.** Customer shall indemnify Silverpop against, and shall hold Silverpop harmless from, any and all claims, lawsuits and/or causes of action threatened or asserted against Silverpop based on, arising out of or in any way relating to (i) Customer's breach of this Agreement, (ii) use of the Services by Customer and its End Users, (iii) any claim that the Customer's Marks infringe a third party's intellectual property rights, or (iv) any claim that content provided by Customer and used with the Silverpop Product infringes a third party's intellectual property rights ("Customer Indemnification Events"). Customer shall pay any and all awards, judgments, settlements, fees and costs, including, without limitation, attorneys' fees, incurred by or on behalf of Silverpop in the defense, satisfaction and/or settlement of any and all such claims, lawsuits and causes of action. Customer's obligations under this Section 7 are expressly conditioned on (a) Silverpop giving Customer prompt written notice of any claims, demand, or suit threatened or instituted against it for any losses, damages, costs, expenses, liabilities, obligations and

claims of any kind that Silverpop may at any time suffer or incur resulting directly and solely from a Customer Indemnification Event; (b) Silverpop providing Customer (at Customer's expense) with all information and assistance necessary to defend or settle such liability or claim; and (c) Customer has sole control of the defense and all related settlement negotiations.

- 8. OWNERSHIP AND RESERVATION OF RIGHTS.** Title, ownership rights, and intellectual property rights in and to the Silverpop Product and the Silverpop Marks (and all derivative works thereto and copies thereof) will remain with Silverpop and/or its third party licensors. Customer agrees to abide by the patent and copyright laws and all other applicable laws of the United States including, but not limited to, export control laws. Customer acknowledges that the Silverpop Product remains Proprietary Information of Silverpop and/or its third party licensors, that the source code is not licensed to Customer by this Agreement and will not be provided by Silverpop. Except as set forth in this Agreement, no right or implied license or right of any kind is granted to Customer, including, but not limited to, any right to use, reproduce, market, sell, host, translate, distribute, transfer, adopt, disassemble, decompile, reverse engineer the Silverpop Product or any related documentation thereof, or any portions thereof, or obtain possession of any source code or other technical material relating to the Silverpop Product. Customer agrees not to modify the Silverpop Product, create derivative works or attempt to decipher, decompile, disassemble or reverse engineer the Silverpop Product.
- 9. WARRANTIES AND DISCLAIMER.** Each Party represents and warrants that it has the right to enter into this Agreement and to perform all its obligations hereunder. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY, NOR THEIR AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO THE OTHER, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.
- 10. LIMITATION OF LIABILITY.**

- 10.1. Limitation of Remedy.** In no event will Silverpop, its affiliates, licensors or suppliers, or any of their officers, directors, employees, shareholders, agents or representatives be liable to the other party, or any other person or entity for any indirect, incidental, exemplary or consequential damages or loss of goodwill in any way relating to this agreement or resulting from the use of or inability to use the services or the performance or non-performance of any services, including the failure of essential purpose, even if such party has been notified of the possibility or likelihood of such damages occurring, and whether such liability is based on contract, tort, negligence, strict liability, products liability or otherwise.
- 10.2. Maximum Liability.** In no event will Silverpop's liability for any damages to any person or entity regardless of the form of action, whether based on contract, tort, negligence, strict liability, products liability or otherwise, ever exceed the fees received by Silverpop under this agreement during the twelve (12) months immediately preceding the events giving rise to such claim. This limitation of liability shall not apply to a breach of sections 4 and 6.

**11. GENERAL.**

- 11.1. Third Party Sends.** Customer may, from time to time, utilize email lists from third parties. When requirements of the third party providing the list require a Third Party Send (see Schedule A – Definitions), Customer is required to notify Silverpop in advance of each Third Party Send and to provide reports to Silverpop listing the sending user id, date of send, message name, and number of recipients to whom the message is sent.
- 11.2. Force Majeure.** Neither Silverpop nor Customer will be liable for failure to perform any of its respective obligations under this Agreement, other than the payment of Fees and Expenses, if such failure is caused by an event outside its reasonable control, including but not limited to, an act of nature, war, terrorism or other event beyond such party's reasonable control.

**11.4.11.3. Miscellaneous.** Silverpop shall not be liable for any errors or interruption in the use of the Product outside of Silverpop's reasonable control. Access to the Product may be temporarily unavailable for scheduled maintenance, either by Silverpop or by third-party providers, or because of other events. This Agreement supersedes and cancels any previous understandings, representations, or agreements between the parties relating to the subject matter hereof, and expresses the complete and final understanding with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous written and oral agreements and communications relating hereto. Customer may not assign, transfer or pledge this Agreement, or any interest, license or rights herein, in any manner, without the prior written consent of Silverpop. Silverpop and Customer are independent principals in all relationships and actions under and contemplated by this Agreement. This Agreement shall not be construed to create any employment relationship, partnership, joint venture, or agency relationship between the parties or to authorize any party to enter into any commitment or agreement binding on the other. Any failure by either party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. All communications between the parties which are required or permitted to be in writing shall be sent by hand delivery, with receipt obtained, or by prepaid, first class U.S. postal service mail, certified return receipt requested, or by recognized express delivery service, or by facsimile with confirmation by first class U.S. postal service and sent to the address on the Signature Page. By written communication, either party may designate a different address for purposes hereof. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Georgia without regard to its rules governing conflicts of law. This Agreement shall be binding upon and inure to the benefit of each party and their respective heirs, successors and assigns. Facsimile transmissions of the signature page shall be binding upon the parties.

By executing this Agreement, Customer acknowledges that it has reviewed the terms and conditions incorporated into this Agreement and agrees to be legally bound by the same. The parties hereby cause this Agreement to be executed by their duly authorized representative and made effective as of the Effective Date.



JAN-14-2005 16:09

LMT USA 617 494 4788

617 494 4788 P.05/07

Customer:

STEVE [Signature]

By: [Signature]

Title: [Signature]

Address: ONE KENDALL SQ. BLDG 100

CAMBRIDGE MA 02139

Silverpop:

Silverpop Systems Inc.

By: [Signature]

Title: [Signature]

Address: 11 Piedmont Center, Suite 510  
Atlanta, GA 30305

**SCHEDULE A -- DEFINITIONS**

---

As used in this Agreement, and in addition to any other terms defined in this Agreement, the following terms will have the following meanings:

**Confidential Information** means information, other than Trade Secrets, that is of value to its owner and is treated as confidential

**End User** means an employee or independent contractor of Customer

**Owner** refers to the party disclosing Proprietary Information hereunder, whether such party is Silverpop or Customer and whether such disclosure is directly from Owner or through Owner's employees or agents

**Proprietary Information** means Trade Secrets and Confidential Information

**Recipient** refers to the party receiving any Proprietary Information hereunder, whether such party is Silverpop or Customer and whether such disclosure is received directly or through Recipient's employees or agents

**Silverpop Services** means all services provided by Silverpop under this Agreement, whether designated as a part of Silverpop Product or otherwise, and listed on one or more Order Forms

**Silverpop Product** means the product(s) listed on one or more Order Forms

**Third Party Send** means a Silverpop message sent by a third party (list broker or other) wherein (1) the recipient list is controlled by the third party and not uploaded to Silverpop's servers, (2) the message content is created, maintained and delivered from Silverpop's servers, and (3) the message body is created on Silverpop's servers and then transferred to the third party for delivery to the recipient list.

**Trade Secrets** means information defined as trade secrets under applicable law

**Schedule B – Terms of Use****USER PRIVACY**

Silverpop considers the Messages sent by Customer and Customer's End Users to be the private correspondence between the sender and recipient. Silverpop will not monitor, edit or disclose the contents of a Customer's private communications without Customer's prior permission, except that Customer agrees Silverpop may do so: (a) as required by order of a government agency or court of competent jurisdiction; (b) to comply with legal process; (c) if necessary to enforce these Terms of Use; (d) to respond to a good faith belief or third party claims that such contents violate the rights or interests of a third party or these Terms of Use; (e) to protect the rights or property of Silverpop or others. Silverpop will, prior to disclosing the contents of Customer's private communications to any third party, provide notice to the Customer of the details of any claim or other circumstance that may allow disclosure under this section. Customer understands and agrees that technical processing of the Messages is and may be required (w) to send and receive the Messages; (x) to conform to the technical requirements of connecting networks; (y) to conform to the limitations of the Silverpop Product; (z) to conform to other, similar technical requirements, or to conform to the Silverpop Privacy Policy ([http://www.silverpop.com/company\\_legal\\_privpolicy.shtml](http://www.silverpop.com/company_legal_privpolicy.shtml)), as updated from time to time, which is incorporated herein by reference.

**NO "spamming"**

Customer shall not use the Silverpop Product in any way, form or manner that is prohibited by this Agreement, including without limitation the use of any distribution lists with the Silverpop Product that include persons who have not given specific permission to be included on such list for the purpose of receiving email communications from Customer, unless Customer has an existing business or personal relationship with such persons. If Customer uses the Silverpop Product in violation of this Agreement, Silverpop reserves the right to immediately terminate Customer's access to the Silverpop Product. Customer is encouraged to include a valid opt-out mechanism in each message.

**NO RESALE OR COMMERCIAL USE OF THE SERVICE**

Customer's right to use the Silverpop Product is personal to Customer. Customer shall not resell or make any commercial use of the Silverpop Product or otherwise seek financial gain from providing the Silverpop Product or access to the Silverpop Product to any third party without the express, prior, written consent of Silverpop.

**USER CONDUCT**

As a condition of Customer's use of the Silverpop Product, Customer represents and warrants to Silverpop that Customer will not use the Silverpop Product for any purpose that is unlawful or prohibited by these Terms of Use. The Silverpop Product makes use of the Internet to send and receive certain messages; therefore, Customer's conduct is subject to Internet regulations, policies and procedures. By way of example, and not as a limitation, Customer shall not use the Silverpop product:

1. in connection with unlawful contests or pyramid schemes;
2. to defame (including without limitation libel and slander), abuse, harass, stalk, threaten or otherwise violate the legal rights (such as but not limited to rights of privacy and publicity) of others;
3. to publish, distribute or disseminate any defamatory, infringing, obscene, adult-oriented, pornographic, or unlawful material or information through use of the Silverpop Product;
4. to harm minors in any way;
5. to harvest or otherwise collect information about others, including without limitation email addresses and email interception, without their consent;
6. to record the conversations or communications of other people without their consent;
7. to create a false identity for the purpose of misleading others as to the identity of the sender or the origin of a Message or forge message headers or manipulate identifiers to disguise origin of transmission;
8. to transmit or upload any material that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs;
9. to transmit or upload any material that contains software or other material protected by copyright, trademark and patent rights, rights of privacy or publicity or any other applicable law unless Customer owns or controls the rights thereto or has received all necessary consents;
10. to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation;
11. to interfere with or disrupt the Silverpop Product, networks or servers connected to the Silverpop Product or violate the regulations, policies or procedures of such networks or servers;
12. to attempt to gain unauthorized access to the Silverpop Product, other accounts, computer systems or networks connected to the Silverpop Product, through password mining or any other means;
13. to violate any applicable laws or regulations including, without limitation, laws regarding the transmission of technical data or software exported from the United States through the service and any other applicable local, state, national and international laws and regulations;
14. to interfere with another person's use and enjoyment of the Silverpop Product or another individual's or entity's use and enjoyment of similar services;
15. to promote illegal activities;
16. for illegal purposes;
17. for gambling or betting or to promote the use of alcohol, firearms or tobacco products;
18. to email links to World Wide Web sites that violate the terms of this Agreement; or
19. to engage in any other conduct, which, in Silverpop's sole discretion, is considered unauthorized or objectionable.

Customer agrees that Silverpop shall not have liability for any such monitoring, lack of monitoring, review, lack of review, retention, lack of retention or disclosure of information. Customer agrees to be solely responsible and liable for the contents of Customer's Messages sent through the Silverpop Product.